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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,316	04/19/2004	Olivier De La Charriere	016800-678	1068

21839 7590 10/06/2006

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EXAMINER

FLOOD, MICHELE C

ART UNIT	PAPER NUMBER
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1655

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/826,316

Applicant(s)

CHARRIERE ET AL.

Examiner

Michele Flood

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-116 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 40-116 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgment is made of Applicant's "REMARKS" filed on August 14, 2006.

In view of the forgoing, the Examiner vacates the previous Office action and the Office action herein will take its stead.

Claims 40-116 are under examination.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 40-66 and 88-92, drawn to a regime or regime for promoting regrowth of hair and/or retarding hair loss comprising administering a claim designated composition, classified in class 424 subclass 401
- II. Claims 67-76, drawn to a regime or regimen for increasing the mean diameter of strands of hair and/or decreasing the heterogeneity thereof comprising administering a claim designated composition, classified in class 424, subclass 401.
- III. Claims 77-86, drawn to a regime or regimen for increasing hair density comprising administering a claim designated composition, classified in class 424, subclass 401.
- IV. Claims 87, 95 and 96, drawn to a regime or regimen for improving the quality and/or appearance of a head of hair comprising administering a claim designated composition, classified in class 424, subclass 401.

- V. Claims 97-106, drawn to a regime or regimen for inducing repigmentation of the hair comprising administering a claim designated composition, classified in class 424, subclass 401.
- VI. Claims 107-116, drawn to a regime or regimen for the treatment of alopecia comprising administering a claim designated composition, classified in class 424, subclass 401.

The inventions are distinct, each from the other because of the following reasons:

Inventions I-VI are unrelated. Inventions are unrelated if it can be shown -that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the six different groups are directed to five methods to provide different functional effects.

The six inventions above are independent and distinct, each from the other; and, require independent searches, as each of the regimes or regimes for the treatment of hair or the disease condition of alopecia are characterized by divergently different clinical manifestations or divergently pathologies. Therefore, the search for each of the above inventions is not co-extensive particularly with regard to the literature search. Further a reference which would anticipate the invention of one group would not necessarily anticipate or even make obvious another group. Finally, the consideration for patentability is different in each case. Thus, it would be an undue burden to examine all of the above inventions in one application.

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

This application contains claims directed to the following patentably distinct species: the distinct and separate routes of administration of Claims 41 and 42, that is topical or oral, respectively. The species are independent or distinct because divergently different routes of administration constitute the subject matter of Claims 41 and 42.

This application also contains claims directed to the following patentably distinct species: the distinct and separate ingredients set forth in the Markush groups of Claims 48-50, 52-55, 57-59, 73, 74, 83, 84, 93, 94, 103, 104, 113 and 114. The species are independent or distinct because the claim-designated ingredients comprising the Markush groups of each of the aforementioned are characterized by divergently different chemical constituents or divergently different botanical extracts having divergently different biological and/or biochemical functions.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, Claims 40, 43-47, 58, 62, 65-82, 85-92, 95-102, 105-112, 115 and 116 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

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remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Flood whose telephone number is 571-272-0964. The examiner can normally be reached on 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


MICHELE FLOOD
PRIMARY EXAMINER

Michele Flood
Primary Examiner
Art Unit 1655

MCF
October 2, 2006